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INC.; UMG RECORDINGS, INC.;  
ATLANTIC RECORDING  
CORPORATION; SONY BMG MUSIC  
ENTERTAINMENT; and VIRGIN  
RECORDS AMERICA, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
DIVISION

ELEKTRA ENTERTAINMENT GROUP INC.,  
a Delaware corporation; UMG RECORDINGS,  
INC., a Delaware corporation; ATLANTIC  
RECORDING CORPORATION, a Delaware  
corporation; SONY BMG MUSIC  
ENTERTAINMENT, a Delaware general  
partnership; and VIRGIN RECORDS  
AMERICA, INC., a California corporation,

Plaintiffs,

v.

JOHN DOE,

Defendant.

**CV 08 1050**  
CASE NO.

**EX PARTE APPLICATION FOR LEAVE  
TO TAKE IMMEDIATE DISCOVERY**

EX PARTE APPLICATION FOR LEAVE TO TAKE IMMEDIATE DISCOVERY

Case No. \_\_\_\_\_

#35740 v1

ORIGINAL  
FILED  
FEB 21 2008  
RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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1 Plaintiffs, through their undersigned counsel, pursuant to Federal Rules of Civil Procedure 26  
 2 and 45, the Declaration of Carlos Linares, and the authorities cited in the supporting Memorandum  
 3 of Law, hereby apply *ex parte* for an Order permitting Plaintiffs to take immediate discovery.

4 In support thereof, Plaintiffs represent as follows:

5 Plaintiffs, record companies who own the copyrights in the most popular sound recordings in  
 6 the United States, seek leave of the Court to serve limited, immediate discovery on a third party  
 7 Internet Service Provider ("ISP") to determine the true identity of Defendant John Doe, who is being  
 8 sued for direct copyright infringement.<sup>1</sup>

9 As alleged in the complaint, Defendant John Doe, without authorization, used an online  
 10 media distribution system to download Plaintiffs' copyrighted works and/or distribute copyrighted  
 11 works to the public. Although Plaintiffs do not know the true name of Defendant John Doe,  
 12 Plaintiffs have identified Defendant by a unique Internet Protocol ("IP") address assigned to  
 13 Defendant on the date and time of Defendant's infringing activity.

14 Plaintiffs intend to serve a Rule 45 subpoena on the ISP seeking documents that identify  
 15 Defendant's true name, current (and permanent) address and telephone number, e-mail address, and  
 16 Media Access Control ("MAC") address. Without this information, Plaintiffs cannot identify  
 17 Defendant John Doe or pursue their lawsuit to protect their copyrighted works from repeated  
 18 infringement.

19 Good cause exists to allow Plaintiffs to conduct this limited discovery in advance of a Rule  
 20 26(f) conference where there are no known defendants with whom to confer.  
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 24

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25 <sup>1</sup> Because Plaintiffs do not yet know Defendant's true identity, Plaintiffs are unable to  
 26 personally serve Defendant with a copy of this motion. Instead, Plaintiffs will serve the Clerk of  
 27 Court pursuant to Fed. R. Civ. P. 5(b)(2)(C) ("If the person served has no known address, [service  
 28 under Rule 5(a) is made by] leaving a copy with the clerk of the court.") and will serve Defendant's  
 ISP with a copy of this motion. Additionally, if the Court grants this motion, Plaintiffs will ask the  
 ISP to notify the Defendants of the subpoena and provide Defendant with an opportunity to object.

1 WHEREFORE, Plaintiffs apply *ex parte* for an Order permitting Plaintiffs to conduct the  
2 foregoing requested discovery immediately.

3  
4  
5  
6 Dated: February 21, 2008

HOLME ROBERTS & OWEN LLP

7  
8 By 

9 MATTHEW FRANKLIN JAKSA  
10 Attorney for Plaintiffs  
11 ELEKTRA ENTERTAINMENT GROUP INC.;  
12 UMG RECORDINGS, INC.; ATLANTIC  
13 RECORDING CORPORATION; SONY BMG  
14 MUSIC ENTERTAINMENT; and VIRGIN  
15 RECORDS AMERICA, INC.  
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Plaintiffs,

v.

JOHN DOE,

Defendant.

CASE NO. \_\_\_\_\_

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' EX PARTE APPLICATION  
FOR LEAVE TO TAKE IMMEDIATE  
DISCOVERY**

**[PROPOSED] ORDER GRANTING PLAINTIFFS' EX PARTE APPLICATION**

Case No. \_\_\_\_\_

#35742 v1

**RECEIVED**  
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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
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**cv 08**

**1050**

1 Upon the Plaintiffs' *Ex Parte* Application for Leave to Take Immediate Discovery, the  
2 Declaration of Carlos Linares, and the accompanying Memorandum of Law, it is hereby:

3 ORDERED that Plaintiffs may serve immediate discovery on University of California, Santa  
4 Cruz to obtain the identity of Defendant John Doe by serving a Rule 45 subpoena that seeks  
5 documents that identify Defendant John Doe, including the name, current (and permanent) address  
6 and telephone number, e-mail address, and Media Access Control addresses for Defendant. The  
7 disclosure of this information is ordered pursuant to 20 U.S.C. § 1232g(b)(2)(B).

8 IT IS FURTHER ORDERED THAT any information disclosed to Plaintiffs in response to  
9 the Rule 45 subpoena may be used by Plaintiffs solely for the purpose of protecting Plaintiffs' rights  
10 under the Copyright Act.  
11

12 DATED: \_\_\_\_\_

By: \_\_\_\_\_  
United States District Judge